

## REMARKS/ARGUMENTS

### *Claim Rejections*

Claims 20-21 have been cancelled due to applicants' election made in response to the examiner's restriction requirement. Claims 1-19 and 22-24 remain in the application.

### *Restriction Requirement—Election of Claims*

The examiner has issued a restriction requirement to one of the inventions claimed in:

- I. Claims 1-19 and 22-24, drawn to a battery management system classified in class 702, subclass 63;
- II. Claims 20-21, drawn to a battery testing device classified in class 702, subclass 122.

In a telephone conversation with the examiner, applicants' counsel made a provisional election without traverse to prosecute the invention of group I, claims 1-19 and 22-24. Claims 20-21 were withdrawn from further consideration by the examiner pursuant to 37 CFR 1.142(b). Applicant affirms the provisional election to prosecute the invention of the claims of group I, and cancels the claims of group II (claims 20-21) without prejudice or disclaimer of the subject matter.

***Claim Rejections - 35 U.S.C. § 102***

The examiner has rejected claims 1-7, 9-10, 12-18 and 22-24 under 35 U.S.C. 102(e) as being anticipated by Kalley (US 20040251907). The applicants have enclosed herein signed declarations under 37 CFR 131(a) with supporting documents made part of the declaration, stating:

That sometime prior to January 30, 2002, Mr. Quint and Mr. Dworkin conceived an invention called BATTERY MANAGEMENT SYSTEM AND APPARATUS fully and completely as set forth in the claims of the application.

That said invention comprised a battery management system having:

a tag associated with a battery;

said tag bearing a unique identifier;

a battery tester for performing tests on said battery;

said battery tester having an input for capturing said unique identifier;

a communication interface between said battery tester and a computer network;

a server having a database for storing battery-related data associated with said unique identifier transmitted over said computer network.

That said invention also employed a bar code as a tag, and a bar code reader as an input device for capturing the information on the bar code.

That the conception date of the invention is supported by the document bearing the electronic title BatteryCorp Investor PP.ppt, a true and correct printed copy of which is attached, for which the electronic file was last modified on January 30, 2002.

That the invention was built and actually reduced to practice utilizing an internal company test server no later than May 31, 2002, and was tested and worked for its intended purpose. This is evidenced by the document labeled 0000027000000000V.S.R.RAW (created May 31, 2002) showing the successful test data in RAW format which is compatible with a proprietary bar code reading device. A true and correct printed copy of the test data in the electronic document is attached.

That a second embodiment was built and actually reduced to practice utilizing an internal company test server no later than October 25, 2002, and was tested and worked for its intended purpose. This is evidenced by the document labeled 0000026300000033BATTERYCORPTEST.C60 (created October 25, 2002) showing the successful test data in C60 format which is compatible with another proprietary bar code reading device. A true and correct printed copy of the test data in the electronic document is attached.

At least for the period between the conception of the invention and the later actual reduction to practice, Mr. Quint and Mr. Dworkin worked diligently to reduce the invention to practice. The diligence included, without limitation, the acts of:

Procuring a battery testing device for adaptation to the conceived management system;

Building the software platform to implement the system;

Testing the apparatus and system to determine that it worked for its intended purpose;

Making changes or modifications to the system based on the tests;

Monitoring the tests and later installations for customers.

Applicants' submit that their declaration and supporting documents show facts of such character and weight as to establish actual reduction to practice no later than May 31, 2002, which is prior to the effective date of the Kalley reference, which bears a filing date of June 11, 2003. The Kalley reference, therefore, is not available as prior art, and the rejection of claims 1-7, 9-10, 12-18 and 22-24 under section 102 should be withdrawn.

**Allowable Subject Matter**

Applicants note that the examiner has found that claims 8, 11 and 19 would be allowable if rewritten in independent form to overcome the objection to these claims as being dependent upon a rejected base claim. Applicants submit that the removal of Kalley as a reference obviates this objection.


**CONCLUSION:**

Applicants believe that the above is fully responsive to the examiner's concerns. Applicants respectfully request that a timely Notice of Allowance be issued in this case. Respectfully submitted,

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By: \_\_\_\_\_



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